

1 Juanita R. Brooks (CA SBN 75934) / brooks@fr.com
2 Roger A. Denning (CA SBN 228998) / denning@fr.com
3 Jared A. Smith (CA SBN 306576) / jasmith@fr.com
4 FISH & RICHARDSON P.C.
5 12860 El Camino Real, Ste. 400
6 San Diego, CA 92130
7 Telephone: (858) 678-5070 / Fax: (858) 678-5099

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorneys for Plaintiff,
FINJAN LLC

Michael A. Jacobs (CA SBN 111664)
MJacobs@mofo.com
Matthew A. Chivvis (CA SBN 251325)
MChivvis@mofo.com
Diek O. Van Nort (CA SBN 273823)
DVanNort@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-7000/Fax: (415) 268-7522

Attorneys for Defendant,
PALO ALTO NETWORKS, INC.

Additional counsel on signature page

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FINJAN LLC,

Plaintiff,

v.

PALO ALTO NETWORKS, INC.,

Defendant.

Case No. 4:14-CV-04908-PJH

**STIPULATED PROTECTIVE
ORDER AS MODIFIED BY THE
COURT**

Judge: Honorable Phyllis J. Hamilton

1. PURPOSES AND LIMITATIONS

2. Disclosure and discovery activity in this action are likely to involve production of
3. confidential, proprietary, or private information for which special protection from public
4.

1 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 2 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 3 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 4 all disclosures or responses to discovery and that the protection it affords from public disclosure
 5 and use extends only to the limited information or items that are entitled to confidential treatment
 6 under the applicable legal principles. The parties further acknowledge, as set forth in Section
 7 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential
 8 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
 9 the standards that will be applied when a party seeks permission from the court to file material
 10 under seal.

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 13 information or items under this Stipulated Protective Order.

14 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 15 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 16 of Civil Procedure 26(c).

17 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
 18 well as their support staff).

19 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
 20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

21 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 22 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 24 CODE.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of the
 26 medium or manner in which it is generated, stored, or maintained (including, among other things,
 27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
 28

1 responses to discovery in this matter.

2 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
 3 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
 4 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
 5 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
 6 or of a Party's competitor.

7 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
 8 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
 9 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
 10 less restrictive means.

11 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
 12 extremely sensitive "Confidential Information or Items" representing computer code and
 13 associated comments and revision histories, formulas, engineering specifications, or schematics
 14 that define or otherwise describe in detail the algorithms or structure of software or hardware
 15 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
 16 serious harm that could not be avoided by less restrictive means.

17 2.10 House Counsel: attorneys who are employees of a party to this action. House
 18 Counsel does not include Outside Counsel of Record or any other outside counsel.

19 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
 20 entity not named as a Party to this action.

21 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
 22 action but are retained to represent or advise a party to this action and have appeared in this action
 23 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

24 2.13 Party: any party to this action, including all of its officers, directors, employees,
 25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

26 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 27 Material in this action.

28 2.15 Professional Vendors: persons or entities that provide litigation support services
 STIPULATED PROTECTIVE ORDER
 CASE NO. 4:14-CV-04908-PJH

1 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
2 organizing, storing, or retrieving data in any form or medium) and their employees and
3 subcontractors.

4 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
6 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

7 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 3. SCOPE

10 The protections conferred by this Stipulated Protective Order cover not only Protected
11 Material (as defined above), but also (1) any information copied or extracted from Protected
12 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
13 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
14 Material. However, the protections conferred by this Stipulated Protective Order do not cover the
15 following information: (a) any information that is in the public domain at the time of disclosure to
16 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party
17 as a result of publication not involving a violation of this Stipulated Protective Order; and (b) any
18 information known to the Receiving Party that was obtained lawfully from a source who was
19 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
20 trial shall be governed by a separate agreement or order.

21 4. DURATION

22 Even after final disposition of this litigation, the confidentiality obligations imposed by
23 this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise
24 in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of
25 (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
26 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
27 reviews of this action, including the time limits for filing any motions or applications for
28 extension of time pursuant to applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 3 or Non-Party that designates information or items for protection under this Order must take care
 4 to limit any such designation to specific material that qualifies under the appropriate standards.

5 To the extent it is practical to do so, the Designating Party must designate for protection only
 6 those parts of material, documents, items, or oral or written communications that qualify – so that
 7 other portions of the material, documents, items, or communications for which protection is not
 8 warranted are not swept unjustifiably within the ambit of this Stipulated Protective Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 11 unnecessarily encumber or retard the case development process or to impose unnecessary
 12 expenses and burdens on other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated
 14 for protection do not qualify for protection at all or do not qualify for the level of protection
 15 initially asserted, that Designating Party will not unreasonably maintain the designation and will
 16 de-designate (or re-designate for a different level of confidentiality) the information or items upon
 17 reasonable request by a Receiving Party.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 19 Stipulated Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 20 stipulated or ordered, information or items that qualify for protection under this Stipulated
 21 Protective Order must be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Stipulated Protective Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents, but
 24 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 25 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 26 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains
 27 protected material. If only a portion or portions of the material on a page qualifies for protection,
 28 the Producing Party also must clearly identify the protected portion(s) (e.g., by making

1 appropriate markings in the margins) and must specify, for each portion, the level of protection
2 being asserted.

3 A Party or Non-Party that makes original documents or materials available for inspection
4 need not designate them for protection until after the inspecting Party has indicated which
5 material it would like copied and produced. Except for information or items that qualify for
6 designation under section 2.9, during the inspection and before the designation, all of the material
7 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'
8 EYES ONLY." For information or items that qualify for designation under section 2.9, during the
9 inspection and before the designation, all of the material made available for inspection shall be
10 deemed "HIGHLY CONFIDENTIAL – SOURCE CODE." After the inspecting Party has
11 identified the documents it wants copied and produced, the Producing Party must determine
12 which documents, or portions thereof, qualify for protection under this Stipulated Protective
13 Order. Then, before producing the specified documents, the Producing Party must affix the
14 appropriate legend ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
15 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE) to each page that contains
16 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
17 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins) and must specify, for each portion, the level of protection
19 being asserted.

20 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
21 the Designating Party identify on the record, before the close of the deposition, hearing, or other
22 proceeding, all protected testimony and specify the level of protection being asserted. When it is
23 impractical to identify separately each portion of testimony that is entitled to protection and it
24 appears that substantial portions of the testimony may qualify for protection, the Designating
25 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
26 a right to have up to 21 days to identify the specific portions of the testimony as to which
27 protection is sought and to specify the level of protection being asserted. Only those portions of
28 the testimony that are appropriately designated for protection within the 21 days shall be covered

1 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
 2 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
 3 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 4 ATTORNEYS’ EYES ONLY.”

5 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
 6 other proceeding to include Protected Material so that the other parties can ensure that only
 7 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 8 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 9 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
 10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 Transcripts containing Protected Material shall have an obvious legend on the title page
 12 that the transcript contains Protected Material, and the title page shall be followed by a list of all
 13 pages (including line numbers as appropriate) that have been designated as Protected Material and
 14 the level of protection being asserted by the Designating Party. The Designating Party shall
 15 inform the court reporter of these requirements. Any transcript that is prepared before the
 16 expiration of a 21-day period for designation shall be treated during that period as if it had been
 17 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
 18 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
 19 actually designated.

20 (c) for information produced in some form other than documentary, and for any
 21 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 22 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
 23 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
 24 CONFIDENTIAL – SOURCE CODE.” If only a portion or portions of the information or item
 25 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
 26 portion(s) and specify the level of protection being asserted.

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Stipulated Protective Order for such material. Upon timely
 2 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
 3 material is treated in accordance with the provisions of this Stipulated Protective Order.

4 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 10 original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 12 process by providing written notice of each designation it is challenging and describing the basis
 13 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
 14 notice must recite that the challenge to confidentiality is being made in accordance with this
 15 specific paragraph of this Stipulated Protective Order. The parties shall attempt to resolve each
 16 challenge in good faith and must begin the process by conferring directly (in voice to voice
 17 dialogue; other forms of communication are not sufficient) within 14 days of the date of service
 18 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
 19 confidentiality designation was not proper and must give the Designating Party an opportunity to
 20 review the designated material, to reconsider the circumstances, and, if no change in designation
 21 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
 22 the next stage of the challenge process only if it has engaged in this meet and confer process first
 23 or establishes that the Designating Party is unwilling to participate in the meet and confer process
 24 in a timely manner.

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 26 intervention, the Challenging Party may file a motion challenging a confidentiality designation at
 27 any time if there is good cause for doing so, including a challenge to the designation of a
 28 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must

1 be accompanied by a competent declaration affirming that the movant has complied with the meet
 2 and confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating
 4 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 6 sanctions. All parties shall continue to afford the material in question the level of protection to
 7 which it is entitled under the Producing Party's designation until the court rules on the challenge.

8 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
 10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 12 the categories of persons and under the conditions described in this Stipulated Protective Order.
 13 When the litigation has been terminated, a Receiving Party must comply with the provisions of
 14 section 15 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and
 16 in a secure manner that ensures that access is limited to the persons authorized under this
 17 Stipulated Protective Order.

18 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
 19 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 20 information or item designated “CONFIDENTIAL” only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 22 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 23 information for this litigation;

24 (b) the officers, directors, and employees (including House Counsel) of the
 25 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
 26 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving Party
 28 to whom disclosure is reasonably necessary for this litigation and who have signed the

“Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and

Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is

reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) As to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” only: one Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary to assess the settlement prospects for this litigation or as part of a motion, request, or pleading intended to be filed with the Court under seal, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed:

1 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
2 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
4 followed;

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and
7 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

9 (f) the author or recipient of a document containing the information or a custodian
10 or other person who otherwise possessed or knew the information.

11 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
13 CODE” Information or Items to Designated House Counsel or Experts.

14 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
15 Designating Party, a Party that seeks to disclose to a Designated House Counsel any information
16 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
17 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
18 sets forth the full name of the Designated House Counsel and the city and state of his or her
19 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable
20 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
21 involved, or may become involved, in any competitive decision-making.

22 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
23 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Stipulated
24 Protective Order) any information or item that has been designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
26 CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party
27 that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
28 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving

1 Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the
 2 city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume,
 3 (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom the
 4 Expert has received compensation or funding for work in his or her areas of expertise or to whom
 5 the expert has provided professional services, including in connection with a litigation, at any
 6 time during the preceding five years,¹ and (6) identifies (by name and number of the case, filing
 7 date, and location of court) any litigation in connection with which the Expert has offered expert
 8 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
 9 preceding five years.

10 (b) A Party that makes a request and provides the information specified in the
 11 preceding respective paragraphs may disclose the subject Protected Material to the identified
 12 Designated House Counsel or Expert 14 days after delivering the request unless the Party receives
 13 a written objection from the Designating Party. Any such objection must set forth in detail the
 14 grounds on which it is based.

15 (c) A Party that receives a timely written objection must meet and confer with the
 16 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
 17 agreement within seven days of the written objection. If no agreement is reached, the Party
 18 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
 19 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
 20 seeking permission from the court to do so. Any such motion must describe the circumstances
 21 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or
 22 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
 23 suggest any additional means that could be used to reduce that risk. In addition, any such motion
 24 must be accompanied by a competent declaration describing the parties' efforts to resolve the
 25 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and

26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to
 27 a third-party, then the Expert should provide whatever information the Expert believes can be
 28 disclosed without violating any confidentiality agreements, and the Party seeking to disclose to
 the Expert shall be available to meet and confer with the Designating Party regarding any such
 engagement.

1 setting forth the reasons advanced by the Designating Party for its refusal to approve the
 2 disclosure.

3 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
 4 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
 5 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
 6 Material to its Designated House Counsel or Expert.

7 8. **PROSECUTION BAR**

8 Absent written consent from the Producing Party, any individual who receives access to
 9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
 10 SOURCE CODE" information shall not be involved in the prosecution of patents or patent
 11 applications relating to network security technology, including without limitation the patents
 12 asserted in this action and any patent or application claiming priority to or otherwise related to the
 13 patents asserted in this action, before any foreign or domestic agency, including the United States
 14 Patent and Trademark Office ("the Patent Office"). For purposes of this paragraph, "prosecution"
 15 includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or
 16 maintenance of patent claims.² To avoid any doubt, "prosecution" as used in this paragraph does
 17 not include representing a party challenging a patent before a domestic or foreign agency
 18 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
 19 reexamination). This Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL –
 20 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information
 21 is first received by the affected individual and shall end two (2) years after final termination of
 22 this action.

23 9. **SOURCE CODE**

24 (a) To the extent production of source code becomes necessary in this case, a
 25 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"
 26 if it comprises or includes confidential, proprietary or trade secret source code.

27 _____
 28 ² Prosecution includes, for example, original prosecution, reissue, reexamination, and
 review proceedings before the United States Patent and Trademark Office.

7 (c) Any source code produced in discovery shall be made available for
8 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
9 business hours or at other mutually agreeable times, at an office of the Producing Party's counsel
10 or another mutually agreed upon location. The Producing Party shall provide open source review,
11 editing, and build tools for the review, and shall accommodate reasonable requests by the
12 Receiving Party for additional open source tools. Any expense for tools that are not open source
13 shall be borne by the Receiving Party. The source code shall be made available for inspection on
14 a secured computer in a secured room without Internet access or network access to other
15 computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of
16 the source code onto any recordable media or recordable device. Upon the Receiving Party's
17 request, the Producing Party shall make available one computer solely for notetaking
18 ("Notetaking Computer"). The Receiving Party shall not bring any electronic devices, other than
19 one USB storage device, which is the property of the Receiving Party or Receiving Party's
20 representative, for use with the Notetaking Computer, into the secured room without prior
21 approval of the Producing Party. The Notetaking Computer shall have a USB port active. The
22 Receiving Party agrees it shall only use the active USB port to access reference documents stored
23 on the USB storage device and to facilitate the transfer of Receiving Party's notes taken on the
24 Notetaking Computer to the USB storage device. The Producing Party agrees that the Receiving
25 Party's representative can connect the USB storage device to or disconnect it from the Notetaking
26 Computer at will during the course of source code inspection. The Producing Party agrees that it
27 has no rights to access, inspect, or otherwise monitor the contents of the USB storage device
28 including, but not limited to, the Receiving Party's electronic notes or reference documents stored

1 thereon. The Receiving Party agrees it shall not use the Notetaking Computer to copy or
2 transcribe any portion of the source code whether as part of notes or otherwise. The Producing
3 Party may visually monitor the activities of the Receiving Party's representatives from outside the
4 secured room during any source code review, but only to ensure that there is no unauthorized
5 recording, copying, or transmission of the source code.

6 (d) The Receiving Party may request that the Producing Party print four paper
7 copies of limited portions of source code that are reasonably necessary for the preparation of
8 court filings, pleadings, expert reports, or other papers, or for deposition or trial, but shall not
9 request paper copies for the purposes of reviewing the source code other than electronically as set
10 forth in paragraph (c) in the first instance. The total number of pages of paper copies of portions
11 of source code shall be limited to 750 pages, which can be increased in increments of 250 pages
12 upon reasonable request by the Receiving Party. The number of pages of paper copies of portions
13 of source code shall not exceed 15 pages of contiguous or substantially contiguous source code
14 without permission from the Producing Party. To the extent a request by Receiving Party exceeds
15 either of these limits, the parties agree to work in good faith to resolve the issue. The Producing
16 Party shall provide all such source code in paper form including Bates numbers and the label
17 "HIGHLY CONFIDENTIAL - SOURCE CODE." The Receiving Party may challenge the
18 amount of source code permitted in hard copy form pursuant to the dispute resolution procedure
19 and timeframes set forth in Paragraph 6, whereby the Receiving Party is the "Challenging Party"
20 and the Producing Party is the "Designating Party" for purposes of dispute resolution. The
21 burden of persuasion shall be on the Receiving Party.

22 (e) The Receiving Party shall maintain a record of any individual who has
23 inspected any portion of the source code in electronic or paper form, which shall be made
24 available to the Producing Party upon request within one business day. The Receiving Party shall
25 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
26 Receiving Party shall not create any electronic or other images of the paper copies and shall not
27 convert any of the information contained in the paper copies into any electronic format. The
28 Receiving Party shall only make additional paper copies if such additional copies are necessary

1 for deposition. Any paper copies used during a deposition shall be retrieved by the Producing
 2 Party at the end of each day and must not be given to or left with a court reporter or any other
 3 unauthorized individual.

4 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 5 LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation that compels
 7 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
 9 SOURCE CODE” that Party must:

10 (a) notify the Designating Party within 5 days of receipt of the subpoena or court
 11 order, whichever occurs sooner, that compels disclosure of any information or items designated in
 12 this action. Such notification shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to issue
 14 in the other litigation that some or all of the material covered by the subpoena or order is subject
 15 to this Stipulated Protective Order. Such notification shall include a copy of this Stipulated
 16 Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 18 Designating Party whose Protected Material may be affected.³

19 If the Designating Party timely seeks a protective order, the Party served with the
 20 subpoena or court order shall not produce any information designated in this action as
 21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
 22 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
 23 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
 24 permission. The Designating Party shall bear the burden and expense of seeking protection in that
 25 court of its confidential material – and nothing in these provisions should be construed as
 26 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from

27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of
 28 this Stipulated Protective Order and to afford the Designating Party in this case an opportunity to
 try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 another court.

2 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
3 LITIGATION

4 (a) The terms of this Stipulated Protective Order are applicable to information
5 produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY
6 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
7 CODE." Such information produced by Non-Parties in connection with this litigation is protected
8 by the remedies and relief provided by this Stipulated Protective Order. Nothing in these
9 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to
11 produce a Non-Party's confidential information in its possession, and the Party is subject to an
12 agreement with the Non-Party not to produce the Non-Party's confidential information, then the
13 Party shall:

14 1. promptly notify in writing the Requesting Party and the Non-Party that
15 some or all of the information requested is subject to a confidentiality agreement with a Non-
16 Party;

17 2. promptly provide the Non-Party with a copy of the Stipulated Protective
18 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
19 the information requested; and

20 3. make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the Receiving Party may
23 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
24 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
25 possession or control that is subject to the confidentiality agreement with the Non-Party before a
26 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
27 burden and expense of seeking protection in this court of its Protected Material.

1 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 3 Material to any person or in any circumstance not authorized under this Stipulated Protective
 4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
 6 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
 7 made of all the terms of this Stipulated Protective Order, and (d) request such person or persons
 8 to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
 9 Exhibit A.

10 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 11 MATERIAL

12 When a Producing Party gives notice to Receiving Parties or the Receiving Party
 13 otherwise becomes aware that produced material is subject to a claim of privilege or other
 14 protection, the Receiving Party must promptly return or destroy the specified information and any
 15 copies it has and may not sequester, use or disclose the information until the claim is resolved.
 16 This includes a restriction against presenting the information to the Court for a determination of
 17 the claim. This provision is not intended to modify whatever procedure may be established in an
 18 e-discovery order that provides for production without prior privilege review. Pursuant to Federal
 19 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
 20 disclosure of a communication or information covered by the attorney-client privilege or work
 21 product protection, the parties may incorporate their agreement in the stipulated protective order
 22 submitted to the court.

23 14. MISCELLANEOUS

24 14.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the
 25 right of any person to seek its modification by the court in the future.

26 14.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated
 27 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 28 producing any information or item on any ground not addressed in this Stipulated Protective

1 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
 2 the material covered by this Stipulated Protective Order.

3 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
 4 laws and regulations relating to the export of technical data contained in such Protected Material,
 5 including the release of such technical data to foreign persons or nationals in the United States or
 6 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
 7 data, and the Receiving Party shall take measures necessary to ensure compliance.

8 14.4 Filing Protected Material. Without written permission from the Designating Party
 9 or a court order secured after appropriate notice to all interested persons, a Party may not file in
 10 the public record in this action any Protected Material. A Party that seeks to file under seal any
 11 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
 12 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
 13 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
 14 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
 15 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
 16 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
 17 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
 18 79-5(e)(2) unless otherwise instructed by the court.

19 15. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 21 Receiving Party must return all Protected Material to the Producing Party or destroy such
 22 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 23 compilations, summaries, and any other format reproducing or capturing any of the Protected
 24 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 25 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 26 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
 27 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 28 not retained any copies, abstracts, compilations, summaries or any other format reproducing or

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
2 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
3 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
4 product, and consultant and expert work product, even if such materials contain Protected
5 Material. Any such archival copies that contain or constitute Protected Material remain subject to
6 this Stipulated Protective Order as set forth in Section 4 (DURATION).

7

8

9

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: March 25, 2021

/s/ Roger A. Denning

12 Juanita R. Brooks (CA SBN 75934)

13 brooks@fr.com

14 Roger A. Denning (CA SBN 228998)

15 denning@fr.com

16 Frank J. Albert (CA SBN 247741)

17 albert@fr.com

18 K. Nicole Williams (CA SBN 291900)

19 nwilliams@fr.com

20 Jared A. Smith (CA SBN 306576)

21 jasmith@fr.com

22 Tucker Terhufen (CA SBN 311038)

23 terhufen@fr.com

24 FISH & RICHARDSON P.C.

25 12860 El Camino Real, Ste. 400

26 San Diego, CA 92130

27 Telephone: (858) 678-5070 / Fax: (858) 678-5099

28 Aamir Kazi (*Pro Hac Vice*)

kazi@fr.com

Lawrence Jarvis (*Pro Hac Vice*)

jarvis@fr.com

FISH & RICHARDSON P.C.

1180 Peachtree St. NE, 21st floor

Atlanta, GA 30309

Telephone: (404) 892-5005 / Fax: (404) 892-5002

Phillip W. Goter (*Pro Hac Vice*)

goter@fr.com

FISH & RICHARDSON P.C.

1 3200 RBC Plaza, 60 South Sixth Street
2 Minneapolis, MN 55402
3 Telephone: (612) 335-5070 / Fax: (612) 288-9696

4 Susan E. Morrison (*Pro Hac Vice*)
5 morrison@fr.com
6 FISH & RICHARDSON P.C.
7 222 Delaware Ave., 17th Floor
8 P.O. Box 1114
9 Wilmington, DE 19801
10 Telephone: (302) 652-5070 / Fax: (302) 652-0607

11 Tracea Rice (*Pro Hac Vice*)
12 trice@fr.com
13 FISH & RICHARDSON P.C.
14 1000 Maine Ave. Ste. 1000
15 Washington, DC 20024
16 Telephone: (202) 783-5070 / Fax: (202) 783-2331

17 Attorneys for Plaintiff FINJAN LLC

18 DATED: March 25, 2021

19 /s/ Colette Reiner Mayer
20 Michael A. Jacobs (CA SBN 111664)
21 MJacobs@mofo.com
22 Matthew A. Chivvis (CA SBN 251325)
23 MChivvis@mofo.com
24 Diek O. Van Nort (CA SBN 273823)
25 DVanNort@mofo.com
26 MORRISON & FOERSTER LLP
27 425 Market Street
28 San Francisco, California 94105-2482
Telephone: (415) 268-7000/Fax: (415) 268-7522

29 Rudy Y. Kim (CA SBN 99426)
30 RudyKim@mofo.com
31 Colette Reiner Mayer (CA SBN 263630)
32 CRMayer@mofo.com
33 MORRISON & FOERSTER LLP
34 755 Page Mill Road
35 Palo Alto, California 94304-1018
36 Telephone: (650) 813-5600/Fax: (650) 494-0792

37 Eric W. Lin (*Pro Hac Vice*)
38 Elin@mofo.com
39 Michael J. DeStefano (*Pro Hac Vice*)
40 Mdestefano@mofo.com

1 MORRISON & FOERSTER LLP
2 250 West 55th Street
3 New York, New York 10019-9601
4 Telephone: (212) 468-8000/Fax: (212) 468-7900

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Attorneys for Defendant
PALO ALTO NETWORKS, INC.

1 **ECF ATTESTATION**

2 I, Colette Reiner Mayer, hereby attest pursuant to Local Rule 5-1(i)(3) that the
3 concurrence to the filing of this document has been obtained from each signatory hereto.

4 Dated: March 25, 2021

/s/ Colette Reiner Mayer

5 Colette Reiner Mayer

6 Attorneys for Defendant
7 PALO ALTO NETWORKS, INC.

8

9

10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11

12 Dated: March 31, 2021



13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of _____ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone
18 number] as my California agent for service of process in connection with this action or any
19 proceedings related to enforcement of this Stipulated Protective Order.

21 || Date:

22 City and State where sworn and signed:

23 Printed name: _____
24 [printed name]

25 Signature: _____
[signature]